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PHONE NUMBER:

FROM: Brad A. Schepers, Reg. No. 45,431

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RE: Response to non-final Office Action for U.S. Patent Application No. 10/699,175

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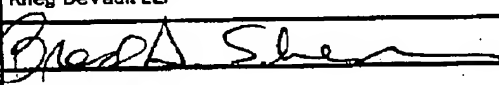
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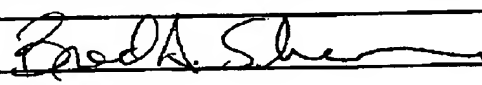
TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/899,175	
	Filing Date	October 31, 2003	
	First Named Inventor	Blanchi et al.	
	Art Unit	3738	
	Examiner Name	Suzette J. Gherbi	
Total Number of Pages in This Submission	16	Attorney Docket Number	MSDI-434/PC318.08

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input checked="" type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Decision on Petition (courtesy copy)
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Krieg DeVault LLP		
Signature			
Printed name	Brad A. Schepers		
Date	March 5, 2008	Reg. No.	45,431

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
Signature			
Typed or printed name	Brad A. Schepers	Date	March 5, 2008

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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2/1/08

In re Application of:
Bianchi, John R. et al
Appl. No.: 10/699,175
Filed: Oct. 31, 2003
Attorney's Docket # MSDI-434/PC316.08
For: OPEN INTERVERTEBRAL SPACER

:
: DECISION ON PETITION
:
:
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This is a decision on the petition filed Dec. 26, 2007 under 37 CFR 1.181 requesting supervisory review of the final office action mailed Nov. 5, 2007. Petitioner requested reconsideration of the finality of the office action.

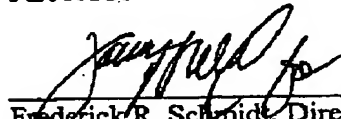
The petition is Granted.

Petitioner requests that the finality of the office action mailed Nov. 5, 2007 be withdrawn because the new ground of rejection to the un-amended claims 134, 269 and 292 were not necessitated by the amendment filed on Oct. 18, 2007.

It is noted in the amendment of Oct. 18, 2007, the applicant did not amend claims 134, 269 and 292. The examiner introduced new art to reject the un-amended claims 134, 269 and 292. Therefore, the rejection of at least claims 134, 269 and 292 under 35 U.S.C. 102(e) as anticipated by Pafford et al (6,371,988) was not necessitated by amendment of Oct. 18, 2007. As such, the Nov. 5, 2007 final office action is premature and thus the finality of the action is hereby withdrawn. The period to respond to the Office action of Nov. 5, 2007 remains unchanged. Since the finality is being withdrawn, any amendment responding to the Office action dated Nov. 5, 2007 will be treated as a 37 CFR § 1.111 amendment.

Any questions regarding this decision should be directed to Special Program Examiner, Henry Yuen, at 571-272-4856.

PETITION GRANTED.


Frederick R. Schmidt, Director
Technology Center 3700